

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
v.)	CRIMINAL NO. 96-00184-KD
DARREL PRENELL GIBBS,)	
Defendant.)	

ORDER

This matter is before the court on defendant's "motion for reconsideration under 18 U.S.C. § 3582(c)(2) extraordinary circumstances" (doc. 272). Defendant moves this court to reconsider the denial of his motion for reduction of sentence under 18 U.S.C. § 3582(c)(2) (docs. 256, 262). Upon consideration and for the reasons set forth herein, the motion for reconsideration is **denied** as untimely.

The order denying defendant's motion for reduction of sentence was entered September 26, 2008. Defendant's motion for reconsideration was filed January 5, 2009. The time frame during which defendant should have filed his motion for reconsideration was ten (10) days after the entry of the order. Because defendant did not file his motion to reconsider during that time period, his motion is untimely. United States v. Gibson, 284 Fed.Appx. 123, 124 (5th Cir. 2008) (finding that a "motion for reconsideration in a criminal proceeding is timely if filed within the period allotted for noticing an appeal; in this instance, within ten days of the order granting the Rule 35(b) motion" and that a motion to reconsider filed fifteen months later was untimely); Fed. R.App. P. 4(b)(1)(A)(i) (the notice of appeal must be filed in the district court within ten (10) days of the entry of either the judgment or the order being appealed); see United States v. Johnson, 2006 WL 839077 (11th Cir. 2006) (finding that although a motion for reconsideration

in a “criminal action is not expressly authorized by the Federal Rules of Criminal Procedure”, a timely filed motion tolls the time for filing a notice of appeal, and that “Johnson’s motion to reconsider was timely filed within the ten-day period for filing a notice of appeal”).

DONE and **ORDERED** this 14th day of January, 2009.

s/ Kristi K. DuBose
KRISTI K. DuBOSE
UNITED STATES DISTRICT JUDGE